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**UNITED STATES DISTRICT COURT  
DISTRICT OF CALIFORNIA**

ALLEN BERNARD SHAY,

Plaintiff,

v.

COUNTY OF LOS ANGELES,  
COUNTY OF LOS ANGELES  
SHERIFF'S DEPARTMENT,  
DEPUTY CHRISTOPHER DERRY,  
and Does 1-10,

Defendants.

Case No. 15-CV-04607-CAS (RAOx)

**PLAINTIFF'S DECLARATION OF  
JOHN BURTON IN OPPOSITION  
TO DEFENDANTS' EX PARTE  
REQUEST FOR CONTINUANCES  
OF THE PRETRIAL AND TRIAL  
DATES**

John Burton declares under penalty of perjury pursuant to the laws of the United States as follows:

1. I am an attorney admitted in California, every federal district in California, the Eastern District of Michigan, the Fourth, Sixth, Eighth and Ninth Circuit Courts of Appeals, and the United States Supreme Court. I am counsel of record for Plaintiff Allen B. Shay. I am filing this declaration in opposition to Defendants' second ex parte application to continue the trial, this time seeking a six-month delay so that an associate attorney recently assigned to the case can attend a summer convention in Canada.

1           2.     Plaintiff filed his complaint on June 17, 2015, and, anxious to get the case  
2 to a jury, served it immediately. After the Court resolved Defendants' motion to  
3 dismiss, the parties filed a joint scheduling report requesting a trial date of March 7,  
4 2017. Docket No. 28 at 9. The lead attorney for Defendants listed in the status  
5 conference report is Rickey Ivie, Esq., a partner in Ivie, McNeill & Wyatt, and the  
6 lawyer whom I presume will actually be trying the case to the jury. The associate  
7 assigned to the case was Davida M. Frieman, Esq. At the April 25, 2016 status  
8 conference, attended by Ms. Frieman and me, the Court set trial for exactly one year  
9 hence, April 25, 2017. Docket No. 29.

10           3.     On September 12, 2017, Defendants filed an unopposed ex parte application  
11 seeking a three-month stay of the litigation and a concomitant continuance of all dates on  
12 the grounds that a close family member of Ms. Frieman suddenly was diagnosed with  
13 terminal cancer. Docket No. 35. To clarify Plaintiff's position on the request, I filed a  
14 declaration stating: "Plaintiff's preference is that the case proceed to trial at the earliest  
15 possible date under the circumstances, but he believes this matter is best resolved by the  
16 Court without his input." Docket No. 36. The Court stayed the action three months and  
17 continued trial to the date Defendants requested, July 25, 2017.

18           4.     The Court held a post-mediation status conference on April 10, 2017.  
19 Ms. Frieman and I appeared. The Court may recall that I asked whether the July 25 trial  
20 date was firm as I had a newer case also set for that date. The Court checked the  
21 calendar and said that with the exception of a possible short criminal matter behind  
22 which we might trail, the trial date is firm. When Ms. Frieman raised a possible conflict  
23 involving Mr. Ivie starting another trial on August 2, 2017, the Court reiterated that this  
24 case would go to trial as scheduled. I subsequently submitted a stipulation to continue  
25 the other matter I had set for July 25 to September 19, 2017.

26           5.     On April 28, Ms. Frieman filed a motion for summary judgment, noticing  
27 the hearing for June 5. I am presently engaged in the preparation of the opposition  
28 papers, which are due in five days. On May 1, she withdrew as counsel in this case.

1           6.       Today I received Defendants' ex parte application seeking an order  
2 continuing the pretrial conference from July 10, 2017, to January 15, 2018, and the trial  
3 from July 25, 2017, to January 22, 2018. The only evidentiary showing to support this  
4 request for a six-month continuance is a declaration by a five-year associate, Antonio K.  
5 Kizzie, Esq., the defense firm assigned to replace Ms. Frieman.

6           7.       First, Mr. Kizzie contends that the file is too vast for him prepare for trial  
7 timely, that he needs at least four more months just to review the record, which consists  
8 of a criminal case that did not survive a preliminary hearing, four deposition transcripts,  
9 including experts, and Plaintiff's responses to Defendants' written discovery requests:

10           I am currently in the process of reviewing the files, discovery materials,  
11 and other pertinent documents consisting of over a dozen (12) large  
12 binders filled with over one-hundred and eighty (180) various classes of  
13 real estate and criminal trial documents for trial preparation and strategy  
14 purposes. However, I will require additional time of at least 120 days to do  
15 so due to the extensive and complicated nature of this matter involving  
16 real estate fraud dating back to 2005 and 2007 that can only be obtained  
17 through this order.

18 Ex Parte Application and Declaration (Docket No. 53) at 11, para. 7.

19           8.       Second, Mr. Kizzie claims that he cannot attend the pretrial conference or  
20 the trial on the dates set because of the following conflicts with his personal matters:

21           I am scheduled and have already purchased nonrefundable tickets to be  
22 out of the state and country from June 28, 2017 to July 16, 2017. I am also  
23 scheduled to attend the National Bar Association's Annual Conference in  
24 Toronto, Ontario from Friday, July 28, 2017 to Sunday, August 6, 2017.  
25 Finally, from August 9, 2017 to August 13, 2017, I will be celebrating my  
26 wedding anniversary and unavailable.

27 *Id.* at 10-11, para. 6.

9. The only actual conflict with the trial date is Mr. Kizzie's wish to attend a 10-day meeting of lawyers scheduled to begin just as this trial should be concluding. That alone should not constitute good cause to delay this two-year-old litigation an additional six months. I respectfully suggest that the Court consider resolving the conflict between Mr. Kizzie's earlier pre-paid vacation and the pretrial conference date, if convenient for the Court's calendar, by continuing that date from July 10 to July 17, after he is scheduled to be back in town.

10. Other than continuing the pretrial conference one week, Plaintiff and I strongly object to the requested relief, and urge that the Court deny the application.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 10, 2017, at Pasadena, California.

/s/John Burton  
John Burton